

**ENTERED**

April 08, 2021

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
MCALLEN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

VS.

0.062 ACRES OF LAND, more or less,  
in STARR COUNTY, TEXAS; JOSE ROEL  
MONTALVO; et al.,

Defendants.

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CIVIL ACTION NO. 7:20-cv-00400

## ORDER

The Court now considers the “Joint Discovery/Case Management Plan Under FRCP 26(f)” filed by the United States on April 2, 2021.<sup>1</sup> This action by the United States to take land to construct and operate fencing, roads, and related structures to secure the United States/Mexico southern international border commenced on December 8, 2020.<sup>2</sup> The parties’ initial pretrial conference set for February 16, 2021 was rescheduled for April 13th following President Biden’s January 20 Proclamation directing applicable executive departments and agencies to “develop a plan for the redirection of funds concerning the southern border wall” no later than March 21, 2021, and a pause on work on the southern border wall while the plan was being developed.<sup>3</sup> The United States submitted a “Joint Discovery/Case Management Plan” on February 5, 2021,<sup>4</sup> and submitted a second “Joint Discovery/Case Management Plan” on April 2, 2021.<sup>5</sup> The Court now considers the most recent plan<sup>6</sup> filed by the United States.

<sup>1</sup> Dkt. No. 18.

<sup>2</sup> Dkt. No. 1.

<sup>3</sup> Proclamation No. 10142, §§ 1–2, 86 Fed. Reg. 7,225, 2021 WL 197402 (Jan. 20, 2021).

<sup>4</sup> Dkt. No. 13.

<sup>5</sup> Dkt. No. 18.

Upon consideration of the plan,<sup>7</sup> the Court notes several issues. First, the plan is unilaterally filed by the United States before completing service of all Defendants.<sup>8</sup> The Court has repeatedly admonished the United States for filing joint discovery/case management plans without having first served all named Defendants.<sup>9</sup> Further, the United States provides that it only attempted to communicate with Defendant Anna Montalvo Garza, who it represents is “acting as a spokesperson for her siblings: Jose Montalvo, Jr., Ninfa M. Mireless[sic], and Edna Cantu,”<sup>10</sup> and that Defendant Anna Montalvo Garza “expressed no interest in participating” in “the drafting of this case management plan.”<sup>11</sup> The United States appears to have made no effort to contact any of the other Defendants after Defendant Anna Montalvo Garza’s refusal to participate.

More significantly, the Court notes that the United States has yet to serve Defendant Jose Roel Montalvo<sup>12</sup> though it provides it plans to do so via publication.<sup>13</sup> Based on the “Declaration of Not Found,” which was not filed until March 8, 2021, the United States attempted and failed to serve Defendant Jose Roel Montalvo between January 19th and January 20th.<sup>14</sup> Thus, since the failed attempt at personal service, the United States has had over two months to seek substituted service of Defendant Jose Roel Montalvo. Additionally, Defendant Jose Roel Montalvo has been listed as an interested party in this case since it was filed on December 8,

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Despite numerous provisions throughout the plan representing the opinion and positions of Defendants, the plan is only signed by Manuel Muniz Lorenzi, counsel for the United States. *See* Dkt. No. 18.

<sup>9</sup> *See* Case No. 7:20-cv-00317, Dkt. No. 15 at 2; Case No. 7:20-cv-255, Dkt. No. 7 at 2; Case No. 7:20-cv-277, Dkt. No. 14 at 2.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> The United States appears to refer to Defendant Jose Roel Montalvo as both “Jose Roel Montalvo, Jr.” and “Jose Montalvo, Jr.” throughout the joint discovery/case management plan, likely to distinguish the father, Jose Roel Montalvo, now deceased, from the son, Jose Roel Montalvo. *See* Dkt. No. 18 at 1 & 5, ¶¶ 1 & 14. As there is only one Jose Roel Montalvo listed as a Defendant in this case, the Court assumes that the United States is referring to this Defendant.

<sup>13</sup> *Id.* at 1, ¶ 1.

<sup>14</sup> Dkt. No. 17.

2020,<sup>15</sup> approximately four months ago. The Court reminds the United States that Federal Rule of Civil Procedure (Rule) 4(m) allows the Court to dismiss an action if service is not completed within ninety days. Unless the United States provides good cause for its failure to serve Defendant Jose Roel Montalvo in the over four months since this case was initiated, the Court will have no choice but to dismiss this case.

Accordingly, the Court **ORDERS** Manuel Muniz Lorenzi, counsel for the United States when this joint discovery/case management plan was filed, to **SHOW CAUSE** at the April 13, 2021 initial pretrial conference for the United States' failure to serve Defendant Jose Roel Montalvo over four months after he was named as an interested party in this case. The Court also **ORDERS** the United States to **SHOW CAUSE** for its failure to contact all Defendants in this case before submitting this discovery/case management plan. The Court further reminds the parties that they must appear **on their own behalf**, unless represented by an attorney, for their initial pretrial and scheduling conference on **Tuesday, April 13, 2021 at 9 a.m.**

Furthermore, in light of the proclamations and orders of various authorities recognizing the COVID-19 pandemic and limiting travel and person-to-person contact,<sup>16</sup> the Court **ORDERS** that the April 13th conference will be conducted using the Zoom for Government videoconference application ([www.zoomgov.com](https://www.zoomgov.com)). Courtroom business attire will be required of all attorneys during the conference. Laptops with a camera feature, cell phones, and electronic tablets may be used as long as the ZoomGov application is functional on the device. The Court will communicate details regarding the methods of participation in the videoconference to the

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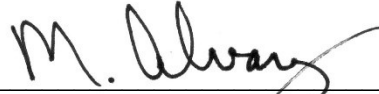
<sup>15</sup> Dkt. No. 1-1 at 19 ("Schedule G").

<sup>16</sup> See Proclamation No. 9994, 85 Fed. Reg. 15,337 (Mar. 13, 2020) (Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak); *In Re: Court Operations in the McAllen Division Under the Exigent Circumstances Created by the COVID-19 Pandemic*, Spec. Order No. M-2021-3 (S.D. Tex. Apr. 1, 2021), <https://www.txs.uscourts.gov/sites/txs/files/Special%20Order%20M-2021-03%20Court%20Operations%20in%20the%20McAllen%20Division%20During%20COVID-19.pdf>.

parties on the business day prior to the scheduled hearing. All parties intending to appear at the videoconference should have current contact information on file with the Clerk of the Court.

IT IS SO ORDERED.

DONE at McAllen, Texas, this 8th day of April 2021.

A handwritten signature in black ink, appearing to read "M. Alvarez", is written over a horizontal line.

Micaela Alvarez  
United States District Judge